



**MILPITAS CITY COUNCIL MEETING AGENDA
DECEMBER 19, 2006**

**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**

CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING
(Pursuant to CA Government Code §54957.6) City Negotiator: Carmen Valdez
Employee Groups: Milpitas Employee Association (MEA), Milpitas Supervisor Association (MSA),
International Association of Fire Fighters (IAFF), Mid Management and Confidential Employees
(LIUNA) Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required
pursuant to Government Code §54957.1, including the vote on abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Vice Mayor Livengood)**
- VI. APPROVAL OF MINUTES - November 29 and December 5, 2006**
- VII. SCHEDULE OF MEETINGS**
- VIII. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. CONSENT CALENDAR (Items with Asterisks)**
- XIII. PUBLIC HEARINGS**
 - 1. 2007 Citizen Options for Public Safety "COPS" Grant (Staff Contact: Charlotte Pang, 586-2432)**

2. Waive the First Reading and Introduce Ordinance No. 38.770 Amending Zoning Ordinance Text (ZT2006-6) to Establish an Institutional Zone Designation, and Amend the “C1” and “C2” Zones to Allow a Conditional Use of a Farmers Market; and Adopt a Resolution to Amend the General Plan (GP2006-6) to Establish an Institutional Plan Designation (Staff Contact: Cindy Maxwell, 586-3287)
3. Appeal of Planning Commission Denial of Use Permit Amendment No. UA2006-2 (Jerry’s Market) (Staff Contact: Cindy Hom, 586-3284)

XIV. UNFINISHED BUSINESS

- * 4. Update on the Odor Control Comprehensive Action Plan (Staff Contact: Marilyn Nickel, 586-3345)

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes - November 29 and December 5, 2006

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library and East Parking Garage, Award Construction Contract for the Library, and Approve a Contract Amendment with Group 4 Architecture for Construction Services on the Library, Projects No. 8162 and No. 8161 (Staff Contact: Mark Rogge, 586-3403)

***RA6. Acceptance of the Milpitas Redevelopment Agency Fiscal Year 2005-2006 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

***RA7. Adopt a Resolution Granting Final Acceptance of the Utility Relocation Project (Phase I) Weller Lane and Winsor Street, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

***RA8. Approve the Senior Center Facilities Subcommittee’s Recommendation to Authorize the City Manager to Execute an Agreement Amendment No. 1: Noll & Tam Architects for the Milpitas Senior Center, Project No. 8176 (Staff Contacts: Greg Armendariz, 586-3317 and Bonnie Greiner, 586-3227)**

***RA9. Approve Budget Amendment Appropriating \$300,000 From the Redevelopment Agency Undesignated Reserve to the City Attorney Department for Public Works Litigation and Approve Purchase Order in the Amount of \$300,000 to Meyers Nave (Staff Contact: Steve Mattas, 586-3040)**

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

5. Report Regarding Status of Milpitas Pre-School (Contact: Mayor Jose Esteves, 586-3029)
6. Update on Wireless Internet Service in Milpitas (Contact: Mayor Jose Esteves, 586-3029)

7. **Approve Mayor Esteves' Recommendations for Appointments to the Planning Commission (Contact: Mayor Jose Esteves, 586-3029)**

XVII. NEW BUSINESS

8. **Update on the Status of the Transit Area Specific Plan (Staff Contact: Dennis Carrington, 586-3275)**
- * 9. **Approve One Organizational Youth Sports Assistance Fund Grant (Staff Contact: Bonnie Greiner, 586-3227)**
- * 10. **Authorize the Purchasing Agent to Dispose of Four Surplus Vehicles/Equipment (Staff Contact: Chris Schroeder, 586-3161)**

XVIII. ORDINANCES

11. **Waive First Reading and Introduce Traffic Ordinance 43.205, Amendment to the Traffic Code to Change Speed Limits on Various Milpitas Streets (Staff Contact: Jaime Rodriguez, 586-3335)**
12. **Waive First Reading and Introduce Ordinance No. 262.4 Regarding Open Government (Contacts: Vice Mayor Livengood, 586-3000 and Councilmember Gomez, 586-3031)**
- * 13. **Waive Second Reading and Adopt Ordinance No. 38.769 for Zone Change No. ZC2005-1 (Staff Contact: Dennis Carrington, 586-3275)**

XIX. RESOLUTIONS

- * 14. **Adopt a Resolution Approving Sobriety Checkpoint Program Agreement With the Regents of the University of California School of Public Health U.C. Berkeley, and the California Office of Traffic Safety (Staff Contact: Tom Borck, 586 2434)**
- * 15. **Adopt a Resolution of Findings to Establish a Preference for Milpitas Unified School District (MUSD) Teachers for Affordable Housing Units within the Centria and Paragon Residential Projects (Staff Contact: Felix Reliford, 586-3071)**
- * 16. **Adopt a Resolution Approving Employment Agreement Between City of Milpitas and Thomas C. Williams to Serve as City Manager and Executive Director of the Milpitas Redevelopment Agency (Staff Contact: Steve Mattas, 586-3040)**

XX. BIDS AND CONTRACTS

- * 17. **Award Contract for Median Mulch and Street Tree Maintenance for Great Mall Parkway, Project No. 4133, to Forster & Kroeger (Staff Contact: Greg Armendariz, 586-3317)**
- * 18. **Approve Amendment Agreement No. 3 with Harris & Associates for Plan Check Services (Staff Contact: Mehdi Khaila, 586-3328)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 2, 2007 AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT

ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN
GOVERNMENT COMMISSION

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

E-mail: rpioroda@ci.milpitas.ca.gov / Fax: 408-586-3030 / Phone: 408-586-3040

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings on the following Commissions:

Citizens Emergency Preparedness Advisory Commission

Economic Development Commission (Hotel Rep)

Mobile Home Park Rental Review Board (alternate)

Recycling and Source Reduction Advisory Commission (Alternate)

Sister Cities Commission (Alternate)

Applications are available online at www.ci.milpitas.ca.gov or outside the City Council Chambers.

Contact the City Clerk's Office (586-3003) for information.

AGENDA REPORTS

XIII. PUBLIC HEARINGS

1. 2007 Citizen Options for Public Safety “COPS” Grant (Staff Contact: Charlotte Pang, 596-2432)

Background: The California State Legislature awarded \$127,051 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant. No city matching funds are required.

CA Government Code sections 30061-30065 specify that these funds must be used for front line law enforcement services and must supplement and not supplant existing funding for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police of the law enforcement agency that provides police services for that city. The request shall indicate the front line law enforcement needs of the requesting entity including the personnel and equipment that are necessary to meet those needs.

The police staff is requesting that the designated monies be used to fund: Teen Academy; Community Relations Supplies; On-line Reporting System; Taser Cameras & Holsters; DVD/CD Duplicator and Storage Unit; Range Equipment; Major Disaster Equipment Bag upgrade; ADORE FTO software; Digital Sprite DVR/Wireless Graffiti Camera upgrade; SWAT/K9 Training; SWAT Vests; GPS Tracker/bait car; Lidar; Compact Handheld Radios/Gang Charger; PAS Devices; Dictation Transcription Software; Typewriter with memory; LED Rechargeable Flares; Tactical Team Equipment Bags.

Recommendation: Approve appropriation in the amount of \$127,051, into the Police Department operating budget.

2. Waive the First Reading and Introduce Ordinance No. 38.770 Amending Zoning Ordinance Text (ZT2006-6) to Establish an Institutional Zone Designation, and Amend the “C1” and “C2” Zones to Allow a Conditional Use of a Farmers Market; and Adopt a Resolution to Amend the General Plan (GP2006-6) to Establish an Institutional Plan Designation (Staff Contact: Cindy Maxwell, 586-3287)

Background:

Proposals

- Create a “Public Facilities” land use classification designation in the General Plan.
- Create a new “I” Institutional zoning district.
- Specifically list “Farmers’ Markets” as an allowable land use subject to a conditional Use Permit in the “C1” Neighborhood Commercial, “C2” General Commercial and “I” Institutional zoning districts.
- Create a definition of “Farmer’s Market” in the zoning ordinance.

Discussion

General Plan Amendment: The existing General Plan specifically identifies the location of public schools and the Elmwood Correctional Facility on the Land Use map, but does not address many types of public facilities. The proposed General Plan Amendment would also identify all City owned facilities so zoning can be applied uniformly with the “I” Institutional zoning district. The General Plan Amendment will be reflected on pages 2-14 and read as follows:

The Institutional classification is for parcels owned by public agencies and intended to be accessed by the public. There are three institutional classifications:

1. Schools
2. Correctional Facility
3. Public Facilities

Institutional Zoning District: Currently, public facilities are located in eight different zoning districts:

<i>Public Facility</i>	<i>Zoning Districts</i>
Schools, District Office	“R1-6” Single Family Residential
County Correctional Facility	“A” Agriculture
City Hall, Library, Community Center	“TC-S” Town Center
Future Library	“MXD-TOD-S” Mixed Use with Transit Oriented Overlay
Senior Center	“MXD-S” Mixed Use
Police/Public Works	“HS-S” Highway Service
Sports Center	“R1-6” Single Family Residential
Fire Station 1	“MXD-S” Mixed Use
Fire Station 2	“R3-S” Multi-Family High Residential
Fire Station 3	“R1-6” Single Family Residential
Fire Station 4	“MP-S” Industrial Park

The proposed “I” Institutional zoning district would be consistently applied to publicly owned facilities and improve the clarity of the City’s zoning organization. Of nine local communities, seven have a special district for public facilities:

<i>Jurisdiction</i>	<i>Zoning for Public Facilities</i>
Campbell	Public Facilities
East Palo Alto	No special district
Fremont	Public Facilities
Mountain View	Public Facility
Palo Alto	Public Facilities
Pleasanton	Public and Institutional District
San Jose	No special district
Santa Clara	“B” Public, Quasi-Public, and Public Park or Recreation
Sunnyvale	Office and Public Facilities

Farmers’ Markets: The Farmers’ Market is a highly desired use by Milpitas residents. The Market has been unable to operate for the last 18 months due their inability to find a suitable location now that the Town Center is not available. In the past, the Market received a Use Permit as a limited temporary use and as a conditional use in the Town Center zoning district. The proposed Use Permit process for Farmers’ Market will provide a clear and easy to understand review process and help facilitate the siting of a new Farmers’ Market in Milpitas. This Zoning Ordinance Text amendment proposes that Farmers’ Market be added to the C1 “Neighborhood Commercial” and C2 “General Commercial” zoning districts as section XI-10-18.03-5.2 and XI-10-19.03-16.5.

The following definition of Farmers’ Market is proposed as Section XI-10-2.38-1.5: An event offering for sale produce, food items, and related goods and merchandise by certified growers authorized to sell, directly to consumers, products that are produced on land the producer controls or taken in consignment from other producers.

Next Steps

- The Planning Commission and City Council will hold public hearings to designate and rezone specific sites for the Institutional land use designation and zoning district.
- Potential sites are facilities owned and maintained by public agencies such as the Milpitas Unified School District (i.e., schools, district offices), Santa Clara County (i.e., Elmwood, library) and City facilities (i.e. City Hall, police and public works building, fire stations).

Environmental Review

This project is exempt from further environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. Projects are exempt when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Recommendations:

1. Open Public Hearing for testimony; then Close the Public Hearing.
 2. Waive the first reading beyond the title of proposed Ordinance No. 38.770.
 3. Introduce Ordinance No. 38.770 for Zoning Ordinance Text Amendment No. ZT2006-6 and adopt resolution approving General Plan Amendment No. GP2006-6 to provide an Institutional land use designation of the General Plan.
 4. Adopt a Resolution adding the "Public Facilities" designation to the General Plan.
3. **Appeal of Planning Commission Denial of Use Permit Amendment No. UA2006-2 (Jerry's Market) (Staff Contact: Cindy Hom, 586-3284)**

Background:

Appeal No. AP2006-2: A request to appeal the Milpitas Planning Commission decision to deny Use Permit Amendment No. UA2006-2, a request to allow sales of all types of alcohol at an existing convenience store located at 1491 S. Main Street, (known as Jerry's Market) (APN 086-18-052), zoned General Commercial (C2). Currently, the business is allowed to sell beer and wine, per the underlying permit.

On October 25, 2006, the Planning Commission denied Use Permit Amendment No. UA2006-2, based on the following findings:

- The proposed sale of all types of liquor is incompatible with the surrounding single-family residential neighborhood because of the unwanted activities (i.e. public intoxication, public disturbances, loitering, etc.) that could be exacerbated by the sale of all types of alcohol.
- The proposed sale of hard liquor at Jerry's Market would not be a suitable location because of the close proximity to Zanker Elementary School, Elmwood Correctional Facility, and that it would be within the path of travel for students.
- There is considerable opposition from the Starlite Pines Homeowners Association and adjacent neighbors based on the community meetings with the Pines residents, written public comments, and a vote by the Starlite Pines Homeowners Association recommending denial of the request at its September 11, 2006 meeting.
- The sale of hard liquor would perpetuate the problems that currently exist with the sale of beer and wine such as graffiti, littering, and gathering of people who use the common areas to smoke, drink and conduct other nuisances as evidenced by the debris left behind.
- The sale of hard liquor does not provide a community benefit given the proximity to other liquor establishments within the area that can provide the same service.

Application

The applicant is requesting to appeal the Planning Commission's decision because it was not based on substantial evidence and was contrary to the legal standards for such decisions. The applicant contends that the evidence does not suggest that the incidents of concern are attributable to customers or the operations of Jerry's Market. The applicant has not been cited by the City, Milpitas Police Department, and/or the State Alcoholic Beverage Control (ABC) for violations within the last five years.

Lastly, the applicant offered nine conditions that are intended to address some of the neighborhood concerns including the following.

1. **REDUCED HOURS OF OPERATION:** Jerry's Market is presently allowed to operate from 6:00 a.m. to 2:00 a.m. The applicant proposed to operate from 6:00 a.m. to 11:00 p.m. every night.
2. **CLOSURE OF THE BACK PARKING AREA:** Close parking lot between the hours of 10:00 p.m. and 6:00 a.m.
3. **ADD "GOOD NEIGHBOR" SIGNS:** Add "Good Neighbor" signs in the parking lot to remind customers to avoid loud noise and music that might disturb nearby neighbors.
4. **LITTER AND GRAFFITI PREVENTION:** Pick up litter and abate graffiti twice each day.
5. **IMPROVE VIDEO SURVEILLANCE OF PARKING AREA:** Install two additional cameras (4 total) to give complete coverage of the parking area and retain video recordings for 14 days and make them available to law enforcement upon request.
6. **ADD VIDEO SURVEILLANCE OF JERRY'S PARKING AREA:** Install additional video surveillance of the HOA's side of the common wall provided the HOA agrees that Jerry's Market will not be liable for providing such service.
7. **SIGNS NOT TO LOITER AND THAT DRINKING ALCOHOL IS PROHIBITED:** Applicant will provide improved signs reminding customers not to loiter and prohibit any drinking of alcohol on the property.
8. **REPAIR OF COMMON WALL:** Applicant agrees to offer to contribute a maximum of \$50,000.00 to the HOA to be used for the repair of the common wall on the property line.
9. **LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES:** The applicant agrees to limit the display of alcoholic beverages to no more than 45% of the total floor area.

Staff Analysis

As indicated in the October 25, 2006 Staff Report to the Planning Commission (attached), there were 45 incidents that related to the premise of Jerry's Market. There were a total of 22 incidents of concern that substantiate community concerns which involved public intoxications, loitering, physical assaults, and fight disturbances to name a few. The Police Department records indicate that 3 of the 22 incidents involved a customer of Jerry's Market and are noted in items 15, 26, and 35 of the Police Activity Report for Jerry's Market found in the October 25, 2006 Planning Commission Staff report attachment. However, the remaining 19 incidents in which it was undetermined if the individual involved was a customer, the individuals were observed with open bottles of beer as noted in item no. 6, 7, and 33. In another incident (item 10), a person was loitering in front of the business to conduct sale and transfer of drugs and ultimately arrested for possession of drugs. All incidents occurred during the business's operating hours.

Public comments expressed the concern that the sale of hard liquor would exacerbate the problems that currently exist. The alcohol aspect of the business invites unsavory individuals who are disruptive with noise, deposit litter near the market, or consume liquor in the common areas of Starlite Pines residential neighborhood. Staff conducted

site visits that confirm the conditions of beer bottles and litter being left behind in the mini-park areas and that the condition does deter residents from the enjoyment of these recreational areas.

Recommendations:

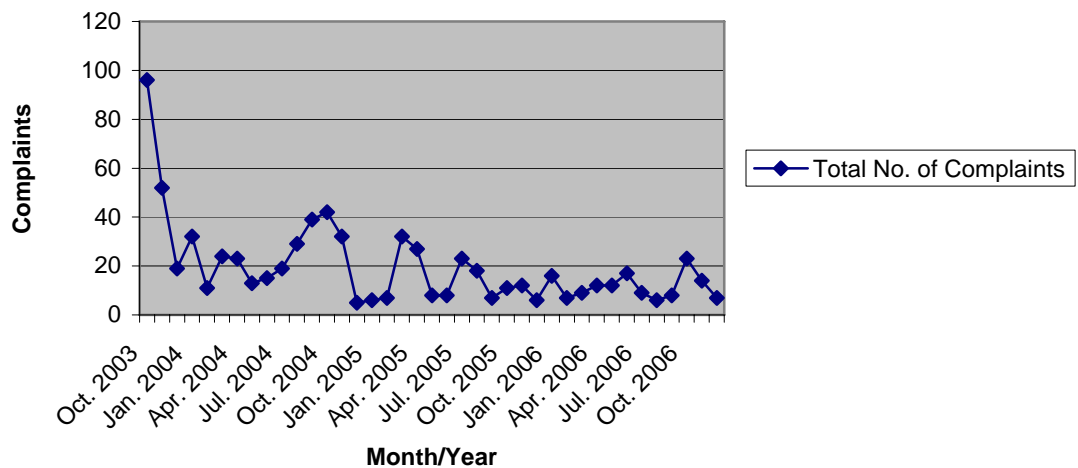
1. Open the Public Hearing for comments.
2. Close the Public Hearing.
3. Uphold Planning Commission's decision to deny Use Permit Amendment No. UA2006-2 based on the Findings noted.

XIV. UNFINISHED BUSINESS

- * 4. **Update on the Odor Control Comprehensive Action Plan (Staff Contact: Marilyn Nickel, 586-3345)**

Background: This report describes some of the odor-reducing improvements that have been implemented over the past three years. As a result of this effort, the following charts show the general trend of a decreasing number of complaints over the last few years.

October 2003 - December 11, 2006 Odor Complaint Summary *



Period	# of complaints *
Oct 2003-Sept 2004	372
Oct 2004-Sept 2005	215
Oct 2005-Sept 2006	124

*No. of complaints as received by the Bay Area Air Quality Management District (BAAQMD)

The following substantial odor-reducing improvements have been implemented.

- Newby Island Compost Facility relocated windows to the facility's interior and modified operations based upon wind gauge weather data.
- Water Pollution Control Plant has modified its sludge harvesting process to reduce the handling frequency and adjusted operations based upon wind gauge weather data.
- Cargill Salt Ponds constructed an emergency feed system to prevent ponds from drying out.
- BAAQMD implemented a rapid notification program providing real-time complaint information to several facilities with biological processes.

City staff continues to monitor odor complaints. The City's consultant is reviewing weather data, number and type of complaints, and facility improvements and will be making a recommendation in the near future regarding reasonable baseline odor levels.

Recommendation: Receive the updated progress report.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes - November 29 and December 5, 2006

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library and East Parking Garage, Award Construction Contract for the Library, and Approve a Contract Amendment with Group 4 Architecture for Construction Services on the Library, Projects No. 8162 and No. 8161 (Staff Contact: Mark Rogge, 586-3403)

Background:

The Library Subcommittee met on November 28 and December 13, and heard a progress report on the Library and Garage projects and the bid results for the library. Bids were received for the new Milpitas Public Library on December 13, and the garage project is under construction. Staff will provide a brief presentation on the progress of these projects.

Library

Plans and Specifications for construction of the Library were issued for bidding on November 6. Six pre-qualified general contractors attended the pre-bid on November 14. Project open house meetings for contractors were held on November 28 and 30. Since bids were received on December 13 at 2:00 PM, after publication of this agenda, staff will give an oral report on bid results at the meeting. Staff will present the information at the Library Subcommittee meeting and recommend award to the lowest responsive and responsible bidder, subject to review by the Library Subcommittee.

The library project complies with the California Environmental Quality Act (CEQA) in part by certification and compliance to mitigation measures established in the North Main Street Development Environmental Impact Report that was certified by the City Council/Agency on January 4, 2005.

Several pre-requisite mitigations have been satisfied, including:

1. Creation of a risk management plan, demolition of existing site structures, and abatement of hazardous materials and mold, and pending resolution of open hazardous-material clean-up cases;
2. Compliance with mitigations and provisions of the Milpitas Historic Resources Preservation code, for the removal of the historic Winsor Blacksmith Shop, including offering it for sale, producing historical documentation, preserving significant architectural elements, and considering findings and recommendations from the Parks, Recreation and Cultural Resources Commission;
3. Archeological review and ongoing monitoring of excavations on the site;
4. Removal of the library site from the FEMA flood plane; and,
5. Compliance with other standard noise, dust, air and water quality requirements in the preliminary work and ongoing in the library project.

Other mitigation measures are either included as requirements within the plans and specifications or will be done as part of related N. Main Street Development projects. Therefore, the Redevelopment Agency may find that the requirements of CEQA and the North Main Street EIR mitigations either have been, or will have been met by the completion of the project.

The professional services contract with Group 4 Architecture included design and bidding, noting that the construction services portion would be added by amendment after the bid documents were prepared. Staff has negotiated the scope and fee for the construction services portion and recommends that the City Council approve the contract amendment. The construction services includes regular meetings at the site with the contractor; responses to Requests for Information and submittals, site reviews including structural review, geotechnical, commissioning of functional systems, warranty review, "as-built" record drawings, and related work for the approximately 2-year construction period plus 1-year warranty period. The construction services fee was included in the library cost plan budget. There are sufficient funds in the project for these purposes. The amendment is included in the council packet and as an attachment.

Parking Garage

Devcon Construction Inc. continues with construction of the parking garage. The foundation is complete. Vertical walls and columns for the first floor are in progress. The project is scheduled for completion in August 2007.

Three Change Orders for the Garage project have been approved: one to revise the lengths of the auger-cast piles, resulting in a credit of \$158,993; one to cover revisions to utilities and damp-proofing of the elevator pit at a cost of \$9,295; and one to compact fill into the hole left as a result of the prior removal of contaminated soil at a cost of \$9,447. The remaining construction contingency, in the approved Garage Cost Plan, after approval of these change orders, is \$940,251, or approximately 117% of the original construction contingency.

Recommendations:

1. Find that the library project complies with CEQA and the North Main Street EIR, as described in the staff report.
2. Award the construction contract for the new Milpitas Public Library, Project No. 8162, to the lowest responsive and responsible bidder as described in the oral report, subject to approval by the City/Agency Attorney.
3. Approve an amendment to the Group 4 Architecture contract for construction services in an amount not to exceed \$1,190,000, subject to approval by the City/Agency Attorney.
4. Approve the Project Stabilization Agreement for the Milpitas Public Library construction
5. Receive the progress report on the Library and Parking Garage projects.

***RA6. Acceptance of the Milpitas Redevelopment Agency Fiscal Year 2005-2006 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

Background: Pursuant to the reporting requirements of the Community Redevelopment Law and the Agency's bylaws, the Agency must prepare a report annually to its legislative body within six months of its fiscal year end. Staff prepared Fiscal Year 2005-2006 Annual Report to provide the Agency board members with an overview of the redevelopment activities and accomplishments for the two project areas. An independent financial audit report was previously accepted by the Agency's Board on November 7, 2006.

Recommendation: Note receipt and file the Milpitas Redevelopment Agency Fiscal Year 2005-2006 Annual Report.

***RA7. Adopt a Resolution Granting Final Acceptance of the Utility Relocation Project (Phase I) Weller Lane and Winsor Street, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

Background:

This project, which was initially accepted on November 1, 2005, has passed the one-year warranty period. A satisfactory final inspection has been made of the public improvements that include removal and relocation of underground utilities. Therefore, the Council/Agency may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt Agency Resolution granting final acceptance and release of the bond for Project No. 8153.

- *RA8. Approve the Senior Center Facilities Subcommittee's Recommendation to Authorize the City Manager to Execute an Agreement Amendment No. 1: Noll & Tam Architects for the Milpitas Senior Center, Project No. 8176 (Staff Contacts: Greg Armendariz, 586-3317 and Bonnie Greiner, 586-3227)**

Background:

On August 1, 2006, the City Council awarded a consultant contract to Noll and Tam Architects for design of the new Milpitas Senior Center, Project No. 8176. The completed project will provide the design of a Senior Center facility, including construction plans and specifications. The existing Milpitas Community Library building is planned to be remodeled to serve as the new Senior Center. The first phase of work is now underway and will result in a program for the design work. This phase involves evaluating community needs, inviting public input, and assessing the existing building.

The Senior Center Facilities Subcommittee convened on December 4, 2006 and reviewed preliminary findings. The evaluation process to date has found that the current Library footprint is not suited to accommodate both the desired senior programs and facilities, and the community's desire for a large Community Hall that can host banquets after hours. It also indicated that in order to properly plan for longer-term needs, the Community Center's proximity and facilities should be taken into consideration. Potential efficiencies can be identified, and a larger number of options may be available to meet the community's needs and goals. In addition, site constraints need to be considered which will affect the future of both facilities as well as a Community Hall (such as total parking availability). This level of expanded effort to plan the joint Senior Center-Community Center area is additional work scope outside the existing scope of consultant services.

The Subcommittee concluded that this level of planning to jointly evaluate the Senior Center-Community Center area is warranted. The Subcommittee recommends that the consultant services agreement with Noll and Tam Architects be amended to include this effort. Staff has negotiated a fee for these services based on time and materials not to exceed \$49,975.00. The additional work will include an evaluation of the Community Center, community hall/banquet options, assessment of parking demand, site layouts coordinated with the Senior Center, opportunities for shared facilities, phasing opportunities, and conceptual costs. The fee is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this expense.

Recommendation: Authorize the City Manager/Agency Director to execute a consulting services agreement amendment with Noll & Tam Architects, in an amount not to exceed \$49,975.00, subject to approval as to form by the City Attorney and as recommended by the Senior Center Facilities Subcommittee.

- *RA9. Approve Budget Amendment Appropriating \$300,000 From the Redevelopment Agency Undesignated Reserve to the City Attorney Department for Public Works Litigation and Approve Purchase Order in the Amount of \$300,000 to Meyers Nave (Staff Contact: Steve Mattas, 586-3040)**

Background: The purpose of this report is to request that the City Council authorize an amendment to the City Attorney's budget for Fiscal Year 2006-07. Specifically, the requested amendment and purchase order include: (1) a budget amendment in the amount of \$300,000 from

the Redevelopment Agency undesignated reserve fund to the City Attorney's department budget for public works litigation attorney's fees and cost expenses, and (2) a purchase order in the amount of \$300,000 to Meyers Nave for public works litigation expenses. These requests were reviewed by the City Council's City Attorney Subcommittee at the December 12, 2006 meeting.

Recommendation: Authorize a budget transfer of \$300,000 from the Redevelopment Agency undesignated reserve fund to the City Attorney's Department for public works litigation expenses and issuance of a purchase order to Meyers Nave in the amount of \$300,000 for public works litigation expenses.

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

5. Report Regarding Status of Milpitas Pre-School (Contact: Mayor Jose Esteves, 586-3029)

Background: Mayor Esteves requested to discuss the status of the Milpitas Pre-school, and a review of issues brought forward by staff at the Council meeting of December 5.

Recommendation: Hear report of Mayor Esteves.

6. Update on Milpitas Wireless Internet Service (Contact: Mayor Esteves, 586-3029)

Background: At the request of the Mayor, a brief presentation will be made by City staff on the status of wireless internet service in Milpitas.

Recommendation: Receive report from staff.

7. Approve Mayor Esteves' Recommendations for Appointments to the Planning Commission (Contact: Mayor Jose Esteves, 586-3029)

Background: Mayor Esteves recommends the following Milpitas residents be appointed to the Planning Commission:

Re-Appoint Norman Azevedo to a term that expires in December 2009.

Appoint Heidi Pham to a term that expires in December 2009.

Appoint Gary Cerezo to a term that expires in December 2009.

Appoint Zeya Mohsin as Alternate to a term that expires in December 2009.

Recommendation: Move to approve the Mayor's recommended Commission appointments.

XVII. NEW BUSINESS

8. Update on the Status of the Transit Area Specific Plan (Staff Contact: Dennis Carrington, 586-3275)

Background:

On May 26, 2006, the City Council selected the Draft Preferred Plan for the Transit Area Specific Plan. The plan shows 7,185 residences, 813,343 square feet of new office, 175,500 square feet of new hotel use and 520,026 square feet of new retail. Staff and the consultant Dyett & Bhatia have been meeting regularly to coordinate work on the Plan. A stakeholders workshop was held on September 7, 2006 to discuss development issues and potential environmental impacts, potential designs for the McCandless area, and next steps in the process including the preparation of the Specific Plan, Draft Environmental

Impact Report and development/zoning regulations, and a timeline for adoption in the spring of 2007. Individual meetings with property owners have continued through the first part of December.

The following changes are proposed subject to feedback received from stakeholders.

Proposed changes:

Railroad spur. The railroad spur in the Piper Montague Subarea north of Montague Expressway is not likely to be relocated as was anticipated with the BART extension project. Two properties located along Montague Expressway at Milpitas Boulevard, totaling 4.71 acres, are proposed to be changed from Very High Density Transit-Oriented Residential to Boulevard Very High Density Mixed Use to reflect the fact that the properties will be subject to train noise and will be cut off from the new residential neighborhood to the north unless another funding source is identified or private land owners pursue relocation.

Reduction of residential units and retail square footage and increase in office square footage. Due to a softening of the residential market, the number of residential units and retail square footage they can support are proposed to be reduced from landowners 7,185 units to 7,109 units and from 520,026 square feet to 287,075 square feet and office square footage increased from 813,343 square feet to 993,843 square feet. A revised fiscal analysis shows that the community facilities district fee anticipated to be \$350 last May would need to be increased to approximately \$450 per unit to achieve revenue and cost neutrality.

The most significant changes to the Draft Preferred Plan map would be the reduction of the Residential – Retail High Density Mixed Use designation in the Great Mall/ Montague Expressway Subarea by 43.76 from 63.78 acres to 20.02 acres for land opposite the Great Mall. The land would be re-designated High Density Transit Oriented Residential south of retail uses adjacent to the Great Mall Parkway and to Boulevard Very High Density Mixed Use along Montague Expressway. These changes stem from the results of a more detailed analysis prepared by Economic Research Associates and continued feedback from property owners and other stakeholders within the Transit Area Plan. The High Density Transit Oriented Residential would be increased from zero acres to 37.97 acres in this subarea.

Net changes for the Transit Area Plan are shown in the table below:

PLAN DESIGNATION	FROM (ACRES)	TO (ACRES)	CHANGE (ACRES)
Boulevard Very High Density Mixed Use	44.5	55.0	+10.5
Residential –Retail High Density Mixed Use	63.78	20.02	-43.76
Very High Density Transit Oriented Residential	52.54	47.83	-4.71
High Density Transit Oriented Residential	56.0	93.97	+37.97

The purpose of this update is to provide the City Council with a more detailed discussion of the proposed changes and to give a status report on the project's progress and schedule. Field Paoli, the architectural consultant, will provide examples of mixed-use projects comparable to that envisioned for the land opposite the Great Mall and Economic Research Associates will discuss fiscal impact issues. For a more detailed explanation of these issues, read the Memorandum dated December 4, 2006, from Dyett & Bhatia in the agenda packet.

It is anticipated that the Draft Specific Plan will be released in early March and that the Draft EIR soon thereafter. Allowing for a normal EIR public review and response to comments, staff anticipated bringing the Final Specific Plan and Final EIR to the City Council for action in July 2007.

Recommendation: Receive the status report of the Transit Area Specific Plan and approve proposed changes to the Draft Preferred Plan.

- * 9. **Approve One Organizational Youth Sports Assistance Fund Grant (Staff Contact: Bonnie Greiner, 586-3227)**

Background:

On June 20, 2006, the Milpitas City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for the 2006-2007 budget year. One organizational Youth Sports Grant application is included in the agenda packet for review and consideration, received from North Valley Milpitas Bobby Sox in the amount of \$1,000 for a girl's softball tournament to be held in June 2007 in Fairfield, CA.

The applicant meets the eligibility for the grant process. Staff reviewed the item requested and has found it meets the application guidelines. The current balance is \$2,000 in the 2006-07 Youth Sports Assistance Fund. The Parks, Recreation and Cultural Resources Commission (PRCRC) reviewed the request on November 4, 2006 and unanimously recommended it be forwarded to Council for approval.

Recommendation: Approve one organizational Youth Sports Grant for the North Valley Milpitas Bobby Sox for \$1,000 leaving a balance of \$1,000 for the remainder of the fiscal year.

- * 10. **Authorize the Purchasing Agent to Dispose of Four Surplus Vehicles/Equipment (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City has four vehicles/pieces of equipment that have reached the end of their useful life. The cost to repair them exceeds their value and they have been removed from service. Public Surplus estimates the value of the vehicles/equipment at auction to be as follows:

1. Motorcycle, Police, 1997 Kawasaki, KZ-1000, License #E82K89 – estimated value: \$1,000 to \$2,500.
2. Motorcycle, Police, 2000 Kawasaki, KZ-1000, License #E93K60 – estimated value: \$1,000 to \$2,500.

3. Mower, Riding, 1997 Torro Grounds Master, Serial #30788-70901 – estimated value: \$500 to \$1,500.
4. Paver, Layton, Asphalt, Model H-500B, Serial #H1711-B-8 – estimated value: \$1,000 to \$2,500.

Staff requests authorization to dispose of the vehicles/equipment at auction, pursuant to section I-2-8.03 of the Municipal Code “Disposal of More Than \$1,000.”

Recommendation: Approve the request to dispose of the vehicles/equipment at auction for the estimated values noted.

XVIII. ORDINANCES

11. Waive First Reading and Introduce Traffic Ordinance 43.205, an Amendment to the Traffic Code to Change Speed Limits on Various Milpitas Streets (Staff Contact: Jaime Rodriguez, 586-3335)

Background:

The City prepares Engineering & Traffic Surveys to determine the appropriate speed zone boundaries and speed limits on City streets, which in turn allows for the use for radar equipment in police enforcement. The City's practice is to keep surveys current to within five years even though the California Vehicle Code requires that surveys be current to within seven years. City Council action is required whenever an Engineering & Traffic Surveys recommends rezoning of the speed zone boundaries or modification to the posted speed limit of a street.

Several studies were recently completed that result in changes to posted speed limits or speed zone boundaries:

Street	Speed Zone Segment	Existing Speed Limit	Proposed Speed Limit
N Park Victoria Dr.	Jacklin Rd to Carson Way	30-MPH	35-MPH
Great Mall Pkwy	Entire Section	40-MPH	40-MPH

N. Park Victoria Drive is currently surveyed from Carson Way to Country Club Dr. with no survey existing between Country Club Dr. and Jacklin Rd. Reconfiguration of the existing speed zone segment to include the missing portion and increasing the speed limit for the entire segment to 35-MPH is recommended to provide consistency in speed limits with S. Park Victoria south of Jacklin Rd. Great Mall Parkway was previously surveyed under two separate speed zone segments, I-880 to Abel St. and Abel St. to Montague Exp; combining the two speed zone segments into one from I-880 to Montague Exp. is recommended due to similar roadway geometry throughout the segment and because of consistency in vehicle speeds between the two segments.

The following roadway segment was also studied but was not previously included in the Municipal Code for adoption by the City Council.

Street	Speed Zone Segment	Existing Speed Limit	Proposed Speed Limit
Ranch Dr	Entire Section	30-MPH	30-MPH

Recommendation:

- 1) Waive the first reading beyond the title of proposed Ordinance No. 43.205.
- 2) Introduce Traffic Ordinance No. 43.205, an Amendment to the Traffic Code, to change the speed limits on various streets.

12. Waive First Reading and Introduce Ordinance No. 262.4 Regarding Open Government (Contacts: Vice Mayor Livengood, 586-3000 and Councilmember Gomez, 586-3031)

Background: The Council's Open Government Subcommittee met on December 6th and discussed Ordinance No. 262.2, which calls for the subcommittee to exist only until December 31, 2006. The Subcommittee now recommends to the City Council that it continue permanently. Councilmembers directed the City Attorney to prepare an Ordinance to extend permanently the Open Government Subcommittee.

The draft ordinance prepared by the City Attorney is included in the agenda packet.

Recommendation:

1. Waive the First Reading beyond the title of proposed Ordinance No. 262.4.
2. Introduce Ordinance No. 262.4, amending provisions for the Open Government Subcommittee.

- * **13. Waive Second Reading and Adopt Ordinance No. 38.769 for Zone Change No. ZC2005-1 (Staff Contact: Dennis Carrington, 586-3275)**

Background:

On December 5, 2006, the City Council waived the first reading beyond the title and introduced Ordinance No. 38.769 for Zone Change No. ZC2005-1 from Neighborhood Commercial (C1-S) to Mixed Use (MXD-S) for the mixed use development at I-880 N. Milpitas Boulevard.

Recommendation: Waive the second reading and adopt Ordinance No. 38.769 for Zone Change No. ZC2005-1.

XIX. RESOLUTIONS

- * **14. Adopt a Resolution Approving Sobriety Checkpoint Program Agreement With the Regents of University of California School of Public Health U.C. Berkeley, and the California Office of Traffic Safety (Staff Contact: Tom Borck, 586 2434)**

Background: The Regents of the University of California and the California Office of Traffic Safety (OTS) Sobriety Checkpoint Program offer opportunities for cities with a population greater than 20,000 to be reimbursed for police overtime costs directly associated with sobriety checkpoints. OTS approved the Police Department's application for reimbursement of overtime necessary to conduct five DUI checkpoints during the period of October 2006 through September 2007. Overtime costs are estimated to be \$4,080 per checkpoint, for a total maximum possible reimbursement of \$20,400.

Recommendations:

1. Adopt resolution approving an agreement with the Regents of the University of California regarding the Sobriety Checkpoint Program.
 2. Authorize the Chief of Police to execute agreement with the Regents of the University of California, subject to approval as to form by the City Attorney.
- * **15. Adopt a Resolution of Findings to Establish a Preference for Milpitas Unified School District (MUSD) Teachers for Affordable Housing Units within the Centria and Paragon Residential Projects (Staff Contact: Felix Reliford, 586-3071)**

Background:

At its meetings in 2005, the Planning Commission and City Council/Redevelopment Agency approved the Centria (464 units) and Paragon (147 units) residential projects, which included 93 and 29 affordable housing units. The affordable housing units include:

Centria: 67 Moderate, 4 Low and 22 Very Low-Income

Paragon: 20 Moderate and 9 Very Low-Income

Milpitas Redevelopment Agency will be providing financial assistance to the projects along with down payment assistance for first-time homebuyers. In the past, the Milpitas Unified School District (MUSD) has expressed difficulty in recruiting and retaining qualified teachers because of the high cost of housing in Milpitas and Santa Clara County (average housing price:\$725,000). During the past three years, the MUSD has experienced significant turnover rate by teachers due to inability to afford or purchase a home in the Bay Area.

Based on the number of very low and low-income affordable housing units (35) in the Centria and Paragon projects these units would be affordable to MUSD teachers. Staff recommends that the Council authorize staff to allocate eight of the very low and low-income units for MUSD teachers. Staff recommends the following allocation:

<u>Income Category</u>	<u>Total Number of Units for MUSD Teachers</u>
Very Low-Income	6
Low- Income	2

If any of the eight affordable units are not occupied by MUSD teachers, the balance of the units would return to the overall pool of units available to the general public. The balance of one hundred fourteen (114) units would still be available for very low, low and moderate-income households.

In order for the City to establish this preference status, the Council needs to adopt a resolution of findings that there is a compelling and legitimate governmental interest in having MUSD teachers live in Milpitas. Other findings are also required in order for the City to allocate a certain fixed number of affordable housing units for MUSD. Staff conducted the background research on the required findings and suggests that the appropriate findings can be made (which are included in the resolution) to allocate the affordable housing units for public school teachers.

In April 2005, the City Council adopted similar resolution of findings for ten below-market rate units for MUSD teachers within the Parc Place residential project. Included in the Council's agenda packet is the resolution to establish the preference for MUSD teachers.

Recommendations:

1. Adopt a resolution with the required findings that the City of Milpitas does have a compelling and legitimate interest in having Milpitas Unified School District teachers live within the City of Milpitas.
2. Direct staff to allocate eight very low and low affordable housing units within the Centria and Paragon residential projects for Milpitas Unified School District teachers.

- * 16. **Adopt a Resolution Approving Employment Agreement Between City of Milpitas and Thomas C. Williams to Serve as City Manager and Executive Director of the Milpitas Redevelopment Agency (Staff Contact: Steve Mattas, 586-3040)**

Background: The City Council has selected Mr. Williams to serve as City Manager and Executive Director of the Milpitas Redevelopment Agency. Pursuant to the City Council direction, we have prepared an agreement pursuant to which Mr. Williams would serve in these

roles effective December 19, 2006. The draft agreement has been reviewed and approved by Mr. Williams and the City Attorney Subcommittee.

Pursuant to the terms of the draft agreement, Mr. Williams would be employed in an at-will status. The contract includes a severance provision which provides for nine months severance during Mr. Williams first year of employment and six months thereafter. The contract also includes standard indemnification and release language. Mr. Williams' compensation would be set at \$199,175 per year including the City paid PERS contribution. In addition, Mr. Williams would be entitled to the benefits identified in the agreement and generally provided to the City Executive Management staff. He would also be provided with use of a City vehicle for use on official City business and for travel to and from his home.

Recommendation: That the City Council approve the attached resolution approving the Employment Agreement between the City of Milpitas and Thomas C. Williams pursuant to which Mr. Williams will serve as City Manager and Executive Director of the Milpitas Redevelopment Agency.

XX. BIDS AND CONTRACTS

- * 17. Award the contract for Median Mulch and Street Tree Maintenance for Great Mall Parkway, Project No. 4133, to Forster & Kroeger Landscape Maintenance, Inc. (Staff Contact: Greg Armendariz, 586-3317)**

Background:

On October 19, 2006, staff went out to bid for maintenance of the median mulch and street trees along Great Mall Parkway. The project provides for two years landscape maintenance of the median mulch and street trees along Great Mall Parkway from Interstate 880 east to the City limits. The work will include trash and weed removal, replacement of median mulch and damaged street trees as necessary. The Engineer's estimate was \$50,000 for this work.

The project was advertised in the Milpitas Post, on the City website and direct mailed to 51 contractors on the City's bid list, and no bids were received. Therefore, in accordance with Municipal Code section I-2-3.03 purchases of \$20,000 or more subsection (e) "if no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market." Negotiations commenced with Forster & Kroeger Landscape Maintenance, Inc. An agreement was reached for \$52,975.00; which only exceeds the Engineers estimate by 6% or \$2,975.00. It is recommended that the contract be awarded rather than re-advertising. Sufficient funds are available in Capital Project No. 4133 for this service.

Recommendation: Authorize the City Manager to execute a contract with Forster & Kroeger Landscape Maintenance, Inc. in the not-to-exceed amount of \$52,975.00, including tax, subject to approval as to form by the City Attorney.

- * 18. Approve Amendment Agreement No. 3 with Harris & Associates for Plan Check Services (Staff Contact: Mehdi Khaila, 586-3328)**

Background: On March 2, 2004, the City Council approved an agreement with Harris & Associates to provide engineering plan check services to work at City Hall on some major development projects. It is anticipated that these engineering services will be required through the summer of 2007. In order to meet project schedules, staff is recommending that the agreement with Harris & Associates be amended for time extension and to increase the contract amount by \$100,000, bringing the total amount to \$640,000. Harris & Associates services are related to private development projects, which are fully reimbursed from developer funds. Included in the Council's packet are copies of the proposed amendment to the existing agreement and the budget change form.

Recommendation:

1. Approve agreement amendment No. 3 with Harris & Associates and authorize the City Manager to execute the amendment, subject to approval as to form by the City Attorney.
2. Approve a budget appropriation in the amount of \$100,000 from the General Fund to the Engineering budget, to be reimbursed by private development funds.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 2, 2006, AT 7:00 P.M.**